May 30, 1990

Dear ---:

This is in response to your letter of March 20, 1990. You have requested our advice concerning whether your client's product is exempt from tax as a prescription drug or medicine.

Facts

Company A (hereinafter referred to as "taxpayer"), a [Out-of-state] corporation, is selling a prescription drug or medicine to patients in the State of California from its place of business located in the State of ---. The medicine will be prescribed by ophthalmologists or doctors in California to patients. Each prescription contains the following information:

- Name and address of the prescriber
- Prescriber's license number
- Name and quantity of the medicine prescribed
- Date of issue
- Directions for use
- Name and address of the patient

The patient will mail an order form to the taxpayer, containing the above –referenced information, along with a check or will pay by charge card, for either a one-month, three month or six month supply of the medicine with the ability to reorder to same. The patient will be reexamined by the prescriber from time to time to determine the effectiveness of the medication and to adjust the dosage, if necessary.

The order form will be processed at the taxpayer's place of business in [Out-of-state] and the medicine will be sent to the patient by United Parcel Service. The processing activity will be under the supervision of pharmacists employed by the taxpayer, who are duly licensed by the [Out-of-sate] State Board of Pharmacy to engage in the practice of pharmacy.

The specific medicine which is the subject of this ruling request is in capsule form and is intended to slow down and/or reverse the macular degeneration in the eyes. It provides an antioxidant protection to the eyes and helps to control the damaging effect of aging, ultraviolet light and other environmental factors on the eyes. The product contains essential vital supplements such as Zinc Picolinate, L Cysteine, Manganese Gluconate, Beta Carotine and others.

The medicine is prescribed by a person authorized to prescribe the medicine, an ophthalmologist or doctor, and it is dispensed by a registered pharmacist. Since the pharmacists are domiciled in [Out-of-state], they do not, obviously, meet the licensing requirements of California Business and Professions Code Section 4037, as required by Regulation 1591(d), but

they do meet licensing requirements of Washington Business and Professions Code Section 18.64.

<u>Analysis</u>

Revenue and Taxation Code section 6369 provides, in pertinent part, that:

"(a) There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use, or other consumption, in this state of medicines:

"(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with the law."

Sales and Use Tax Regulation 1591 provides in paragraph (d) that a registered pharmacist is defined under Section 4037 of the Business and Professions Code as follows:

" 'Registered pharmacist' means a person to whom a certificate has been issued by the board, under the provisions of Section 4085, or a practicing pharmacist. Practicing pharmacists are persons who are registered as such, under Chapter 406 of the Statues of 1905, relating to pharmacy, and who have paid all moneys due for renewal of registration, as required by that statute."

We are of the opinion that a substance or preparation otherwise qualifying as a medicine may qualify as an exempt prescription medicine under section 6369 as long as it is dispensed by a registered pharmacist in accordance with the law of the state where the pharmacist operates. As such, your client's sales of ophthalmic medicine through a pharmacist located in [Out-of-state] state will be considered exempt sales of prescription medicine under section 6369.

This is not a binding opinion pursuant to Revenue and Taxation Code section 6596 because your client is not identified.

Very truly your,

Mary C. Armstrong
Senior Tax Counsel